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 Counterdefendant Moog Inc.

**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

MOOG INC.,

Plaintiff,

v.

SKYRYSE, INC., ROBERT ALIN  
 PILKINGTON, MISOOK KIM, and  
 DOES NOS.1-50,

Defendants.

Case No. 2:22-cv-09094-GW-MAR

**1) PLAINTIFF AND  
 COUNTERDEFENDANT MOOG  
 INC.'S NOTICE OF MOTION  
 AND MOTION TO DISMISS  
 COUNTS 1 THROUGH 9 IN  
 DEFENDANT AND  
 COUNTERCLAIMANT  
 SKYRYSE INC.'S  
 COUNTERCLAIMS PURSUANT**

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**TO FED R. CIV. P. 12(b)(2), (3),  
and (6); AND**

**2) MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT THEREOF**

*[Filed concurrently with Declaration of  
Kazim A. Naqvi; [Proposed] Order]*

Date: March 23, 2023

Time: 8:30 a.m.

Ctrm.: 9D, The Hon. George H. Wu

REDACTED VERSION OF  
DOCUMENT PROPOSED TO BE  
FILED UNDER SEAL

Complaint Filed: March 7, 2022

Counterclaims Filed: January 30, 2023

1 TO THE ABOVE CAPTIONED COURT, AND TO ALL PARTIES AND  
2 THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that at 8:30 a.m. on Thursday, March 23, 2023, or  
4 as soon thereafter as this matter may be heard in Courtroom 9D of the above-  
5 captioned Court, located at the United States Courthouse, 350 West 1st Street, Los  
6 Angeles, CA, 90012, the Honorable George H. Wu presiding, Plaintiff and  
7 Counterdefendant Moog Inc. (“Moog”) will, and hereby does, move for an order  
8 dismissing all nine claims for relief asserted in defendant and counterclaimant  
9 Skyryse, Inc.’s (“Skyryse”) Counterclaims (“CC”) (Dkt. 348-01) in this action  
10 pursuant to Fed. R. Civ. P. 12(b)(2), (3), and (6). Moog moves to dismiss  
11 Skyryse’s first count for Breach of Contract (CC ¶¶ 88-93) pursuant to Fed. R. Civ.  
12 P. 12(b)(2), (3), and (6) for lack of personal jurisdiction, improper venue, and  
13 failure to state a claim upon which relief can be granted. Moog moves to dismiss,  
14 Skyryse’s following counts pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state  
15 a claim upon which relief can be granted:

- 16 • Count 2 – Breach of the Implied Covenant of Good Faith and Fair  
17 Dealing (CC ¶¶ 94-101).
- 18 • Count 3 – Breach of Implied Contract (CC ¶¶ 102-107).
- 19 • Count 4 – Trade Secret Misappropriation Pursuant to the Defend Trade  
20 Secrets Act 18 U.S.C. § 1836 *et seq.*
- 21 • Count 5 – Fraud (CC ¶¶ 119-125).
- 22 • Count 6 – Tortious Interference with Contractual Relationships (CC ¶¶  
23 126-130).
- 24 • Count 7 – Intentional Interference with Existing Business Relationships  
25 (CC ¶¶ 131-136).
- 26 • Count 8 – Intentional Interference with Prospective Business Advantage  
27 (CC ¶¶ 137-143).
- 28 • Count 9 – Unfair Business Practices, Bus. & Prof. Code § 17200 *et seq.*

1 This motion is made on the following grounds:

- 2 • Skyryse’s fraud claim fails because it does not allege any actionable  
3 misrepresentation. All of the purported misrepresentations by Moog are  
4 general statements of future conduct, as opposed to a false statement of  
5 past or existing facts. Skyryse also fails to meet Rule 9(b)’s particularity  
6 requirement.
- 7 • Skyryse’s trade secret misappropriation claim under the Defend Trade  
8 Secrets Act (“DTSA”) fails for the simple reason that it cannot  
9 sufficiently identify a single trade secret. Throughout the CC, Skyryse  
10 provides a vague list of general categories of information. This is  
11 insufficient under the law. Skyryse also fails to plead facts supporting its  
12 bald allegations that Moog misappropriated any Skyryse trade secrets.
- 13 • Skyryse’s breach of contract claims fail at threshold level because two of  
14 the four contracts at issue (the Terms & Conditions and 2019 NDA by  
15 incorporation) require exclusive jurisdiction and venue in New York.  
16 This Court lacks jurisdiction and venue to hear any claims related to  
17 those agreements. The alleged breaches for Moog’s failure to deliver  
18 hardware fail under Statement of Work 1 (“SOW1”) because the  
19 documents referenced by Skyryse show that it expressly cancelled the  
20 SOW1, and agreed to pay Moog for work completed and close out Phase  
21 1. The remain alleged breaches fail because Skyryse has not pled any  
22 facts that Moog improperly used Skyryse confidential information.  
23 Skyryse fails to identify a single trade secret that Moog improperly used.
- 24 • Skyryse’s breach of the implied covenant claim is time-barred by the  
25 two-year SOL for claims sounding in tort. Here, Moog’s alleged  
26 wrongdoing “became clear” to Skyryse by August 17, 2020, at the latest.  
27 The claim also fails because Skyryse expressly contracted that Moog had  
28 no obligation to enter into any additional SOW beyond Phase 1, and

1 Phases 2-4 would require separate SOWs to be mutually agreed upon. No  
 2 breach has been pled.

- 3 • The implied contract claim fails because it is also time-barred under a  
 4 two-year SOL. The claim additionally fails because there is an express  
 5 contract (SOW1) that contradicts the purported terms of any implied  
 6 contract to engage in Phases 2-4. Skyryse also fails to sufficiently  
 7 identify the terms of any implied contract.
- 8 • Skyryse's tortious interference with contract and intentional interference  
 9 with existing business relationships claims fail because Skyryse does not  
 10 specifically identify any contract that has been interfered with, and does  
 11 not allege facts how Moog intentionally interfered with those contract(s)  
 12 or business relationships. The claim for intentional interference with  
 13 prospective business advantage also fails because Skyryse does not  
 14 identify any prospective economic relationships, instead only citing to  
 15 unidentified "prospective customers."
- 16 • Skyryse's unfair competition claim fails because: 1) its other claims do  
 17 not satisfy the "unlawful prong"; 2) no facts are pled showing antitrust  
 18 violations or harm to competition under the "unfair" prong; and 3) no  
 19 facts are pled showing Moog's conduct harms consumers at large for the  
 20 "fraudulent" prong.

21 This motion is made following the conference of counsel pursuant to C.D.  
 22 Cal. Local Rule 7-3 that took place on February 13, 2023 at 1:00 p.m.

23 This motion is based on this Notice, the accompanying Memorandum of  
 24 Points and Authorities, the Declaration of Kazim A. Naqvi, all pleadings, papers  
 25 and other documentary materials in the Court's file for this action, those matters of  
 26 which this Court may or must take judicial notice, and such other matters as this  
 27 Court may consider in connection with the hearing on this matter.

1 Dated: February 21, 2023 SHEPPARD MULLIN RICHTER & HAMPTON LLP

2  
3 By /s/ Rena Andoh  
Rena Andoh

4 Attorney for Plaintiff and Counterdefendant  
5 MOOG INC.  
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1 **I. INTRODUCTION**

2 After being sued for the undisputed theft and misappropriation of over 1.4  
 3 million Moog files by its former employees, Skyryse has now made a desperate  
 4 attempt to further delay and complicate these proceedings by asserting baseless  
 5 counterclaims (“CC”). The crux of Skyryse’s claims is that Moog allegedly: 1)  
 6 duped Skyryse into entering into Phase 1 of a contemplated four Phase project  
 7 without any intent to enter into Phases 2-4; 2) failed to deliver hardware owed  
 8 under the Parties’ lone statement of work (“SOW1”); 3) misappropriated Skyryse’s  
 9 trade secrets for its own purposes; and 4) generally competed and interfered with  
 10 Skyryse’s business. To spin this false story, Skyryse twists and cherry-picks  
 11 portions of documents and e-mail communications without attaching them to the  
 12 CC. The full context of these documents undermine Skyryse’s claims and tells the  
 13 true story. Moreover, Skyryse fails to adequately plead facts supporting the nine  
 14 counterclaims. It is respectfully submitted that each of Skyryse’s counterclaims  
 15 fails as a matter of law and must be dismissed based on the grounds summarized  
 16 above in the Notice of Motion and described further below.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 Skyryse casts an elaborate story in its counterclaims that Moog had fallen  
 19 behind in the aviation marketplace, that Skyryse was a trailblazer in the space with  
 20 advanced technology, and that Moog was dependent on Skyryse to make progress  
 21 in the field of autonomous flight. (CC, ¶¶ 11-30). Skyryse further alleges that  
 22 Moog, recognizing its need to catch up with newer, innovative companies,  
 23 concocted a scheme to enter into business with Skyryse so that it could obtain its  
 24 confidential information about automated flight, with the intent to use Skyryse’s  
 25 purportedly confidential information with other third parties to compete against  
 26 Skyryse. (*Id.*, ¶¶ 31-80). However, the very documents that Skyryse quotes from  
 27 and references tell a different story. Moog introduces many of them into evidence  
 28

1 under the incorporation by reference doctrine. (Declaration of Kazim A. Naqvi  
2 (“Naqvi Dec.”), ¶ 2).

3 **A. Moog’s Autonomous Flight Capabilities Before Working with**  
4 **Skyryse**

5 Skyryse mischaracterizes a 2017 strategic options assessment by third party  
6 Avascent for Moog (the “2017 Study”). (CC, ¶¶ 17-22) (Naqvi Dec., Ex. A).  
7 Skyryse alleges the assessment showed that Moog “had failed to innovate,” “had  
8 already fallen behind the curve,” and “lacked essential knowledge of and expertise  
9 in advanced, highly automated flight systems.” (*Id.*). The 2017 Study says none of  
10 these things. In fact, the 2017 Study notes (among other things) Moog’s substantial  
11 then-existing capabilities, saying that [REDACTED]  
12 [REDACTED]” and that “[REDACTED]  
13 [REDACTED].” (Naqvi Dec., Ex. A at p. 4).

14 Skyryse then selectively quotes from an August 30, 2018 outreach e-mail  
15 from Moog employee Jeff Ehret to Skyryse, trying to downplay Moog’s progress  
16 in autonomous flight. (Naqvi Dec., Ex. B). Ehret’s e-mail provides the opposite:  
17 “[REDACTED]  
18 [REDACTED]  
19 [REDACTED].” (*Id.*, emphasis  
20 added). Skyryse CEO Marc Groden noted in response: “[REDACTED]  
21 [REDACTED]  
22 [REDACTED].” (*Id.*).

23 **B. The 2018 and 2019 NDAs**

24 Moog and Skyryse entered into an initial non-disclosure agreement on  
25 October 24, 2018 (the “First NDA”), and a second on March 15, 2019 (the  
26 “Second NDA”). (CC, ¶¶ 25-27, Exs. A-B). The stated purpose in the Second  
27 NDA is the “*integration of Moog’s flight control systems /subsystems /*  
28 *components and associated autonomous control technologies* with Skyryse’s

aircraft platforms and associated autonomous control technologies.” (*Id.*, Ex. B, p. 1, emphasis added). The First NDA and Second NDA both have New York choice of law provisions. (CC, Exs. A and B, § 10).

#### C. SOW 1

The Parties entered into a Statement of Work on May 31, 2019 (“SOW1”). (CC, Ex. C). Skyryse’s stated value was experience “[REDACTED],” whereas Moog was described as having experience “[REDACTED]” and also possessing “[REDACTED].” (*Id.*, § 2). Skyryse’s stated responsibility was solely to “[REDACTED],” not to develop any component of the flight control system (*Id.*, § 3). As a result, Skyryse “[REDACTED].” (*Id.*, § 2). From the outset, Moog was an industry-leader in flight control systems and had extensive capability in automated flight operations.

Section 4 (Program Overview) provides: “[REDACTED]” (*Id.*, § 4, emphasis added). Similarly, Section 5 provides again: “[REDACTED].” (*Id.*, § 5, emphasis added). Thus, the Parties expressly agreed that their obligations would be limited to SOW1 and any additional SOWs would have to be subsequently mutually agreed-to by the parties.



1 In terms of pricing, Skyrise agreed to pay Moog [REDACTED] for phase one  
 2 for one unit of development hardware and [REDACTED].  
 3 (*Id.*, § 7).

4 In Section 7.2 (Moog Value Addition), Skyrise agreed that “[REDACTED]  
 5 [REDACTED]  
 6 [REDACTED],”  
 7 and that “[REDACTED]  
 8 [REDACTED]  
 9 [REDACTED].” (*Id.*, § 7.2, emphasis added). Skyrise further agreed that “[REDACTED]  
 10 [REDACTED]  
 11 [REDACTED].” (*Id.*). These  
 12 documents undermine Skyrise’s allegation that Moog “lacked essential knowledge  
 13 of and expertise in the advanced, highly automated flight systems.” (CC, ¶ 22).

14 Section 9 (Appendix) further made clear that [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED].” (*Id.*, § 9,  
 17 emphasis added). In other words, if one party did not want to proceed with an  
 18 SOW for Phase 2, it could choose not to move forward.

#### 19 **D. The Terms & Conditions**

20 On June 3, 2019, the Parties agreed upon Terms & Conditions to govern  
 21 SOW1. (CC, Ex. D) (the “T&C”). The Parties agreed that New York law shall  
 22 govern the agreement. (*Id.*, § 31). The Parties also agreed that: “*Any controversy*  
 23 *or claim arising out of or related to this Agreement, or the breach thereof*, which  
 24 cannot be settled by the Parties shall be finally settled by a court. The Parties  
 25 expressly agree that *only the courts located in the City of Buffalo, County of Erie,*  
 26 *State of New York, in the USA shall have jurisdiction and venue to resolve such*  
 27 *a dispute.*” (*Id.*).  
 28

1 Section 23 incorporates by reference the 2019 NDA. (*Id.*, § 23). Under  
 2 Section 39, the Parties agreed they could amend the T&C as mutually agreed to in  
 3 writing. (*Id.*, § 39).

4 **E. Skyryse Does Not Identify a Single Trade Secret**

5 Skyryse repeatedly alleges that it shared “valuable confidential information”  
 6 with Moog throughout their business relationship. (CC, ¶¶ 40-45). However,  
 7 Skyryse does not identify any specific trade secret it disclosed to Moog, nor does it  
 8 attach or even reference any specific documents constituting a trade secret. Instead,  
 9 Skyryse identifies vague categories of information like “drawings,” “schematics,”  
 10 and “business plans.” (*Id.*, ¶ 40). It describes its “state-of-the-art trade secret flight  
 11 control technology” as allowing use of “[REDACTED].” (*Id.*, ¶  
 12 41). There is nothing proprietary about this general concept, especially given  
 13 Moog’s prior experience with R-44 helicopters in the area of autonomous flight  
 14 going back to 2014. (Naqvi Dec., Ex. B).

15 Skyryse selectively quotes from a January 17, 2019 e-mail from Mark  
 16 Groden to various Moog personnel as purported evidence of proprietary  
 17 information. (*Id.*, ¶ 42) (Naqvi Dec., Ex. C). This e-mail actually shows that no  
 18 proprietary information was disclosed, and Groden was merely generally  
 19 describing Skyryse’s broad objectives. (*Id.*). Skyryse also references, but does not  
 20 attach or describe, a confidential “Skyryse Master Plan” that it purportedly shared  
 21 with Moog. (CC, ¶¶ 43-44).

22 **F. Skyryse, not Moog, Cancels SOW1**

23 Skyryse claims that “during its work under SOW 1, Moog secretly decided it  
 24 would walk away from the collaboration, cut Skyryse out, and develop copycat  
 25 flight technology on its own in direct competition with Skyryse.” (*Id.*, ¶ 48). The  
 26 documents Skyryse rely on provide otherwise.

27 Skyryse quotes from a September 20, 2019 e-mail from Moog CEO John  
 28 Scannell, claiming his statement that “[w]e look forward to continuing to work

1 with Skyryse” is some sort of representation or promise of future work together,  
 2 even though neither party was obligated to proceed past SOW1. (*Id.*, ¶ 50). A  
 3 review of the underlying e-mail exchange shows that Scannell made this statement  
 4 after politely [REDACTED]  
 5 [REDACTED]. (Naqvi Dec., Ex. D (SKY\_00078691)). (*Id.*).

6 This e-mail exchange had nothing to do with any promises of future work together.

7 Skyryse misrepresents the Parties’ dealings in closing out Phase 1. In March  
 8 2020, Skyryse communicated to Moog that it wished to cancel the purchase order  
 9 for Phase 1 while the Parties discuss a revised scope of work. Alan Kresse from  
 10 Moog sent Skyryse a letter confirming Skyryse’s intent to cancel the purchase  
 11 order for Phase 1, requesting that Skyryse provide formal written notification of  
 12 the intent to cancel. (CC, ¶ 53). (Naqvi Dec., Ex. E). In response, Gonzalo Rey  
 13 from Skyryse indicated that he is jointly exploring with Moog “[REDACTED]  
 14 [REDACTED]” and that Skyryse was open to  
 15 “[REDACTED].” (CC, ¶ 55) (Naqvi Dec.,  
 16 Ex. F). Dave Norman from Moog responded a few days later, noting that the letter  
 17 from Kresse was just “[REDACTED]  
 18 [REDACTED]” but that Moog was “[REDACTED].”  
 19 (CC, ¶ 56) (Naqvi Dec., Ex. F). Norman also emphasized to Rey that Moog had  
 20 “put in a significant effort to this point” and made “[hardware] commitments” and  
 21 the Parties would need to reconcile Moog’s work to date “before agreeing to Phase  
 22 2 SOW.” (*Id.*). There is nothing in this exchange suggesting Moog forced Skyryse  
 23 to cancel SOW1 with assurances the Parties would enter into additional SOWs.

24 On March 19, 2020, Tim Abbott from Moog e-mailed Rey from Skyryse,  
 25 explaining that Moog had completed 30.8% of the work from SOW1 and thus was  
 26 owed ~\$970,000 from Skyryse. (CC, ¶ 59) (Naqvi Dec., Ex. G). Abbott also  
 27 provided an estimate for a revised purchase order *based on a draft SOW that*  
 28 *Moog had sent Skyryse*, totaling \$4.22M. (*Id.*). In response, Rey expressly

1 acknowledged: “[REDACTED].” (*Id.*, emphasis added).  
 2 Rey further described “[REDACTED],” one for  
 3 “[REDACTED]” and another for “[REDACTED].” (*Id.*). Abbott clarified in a  
 4 March 23, 2020 e-mail that the \$4.22M estimate was only for “[REDACTED]  
 5 [REDACTED]  
 6 [REDACTED].” (*Id.*, emphasis added). Abbott sent another e-mail  
 7 on March 25, 2020 breaking down the \$970,235.37 owed from Skyryse  
 8 (approximately \$405k in materials and \$815k in labor, minus \$250k in payments  
 9 received), further advising that Moog needs Skyryse to provide a letter “formally  
 10 stating the intention to revise the current statement of work and allowing us to  
 11 invoice you for work complete[d] to date.” (CC, ¶ 60) (Naqvi Dec., Ex. G). In  
 12 response, Rey stated: “[REDACTED]” and the letter  
 13 would be sent “[REDACTED].” (*Id.*, emphasis added).

14 The purpose of this e-mail exchange is clear on its face—Moog needed  
 15 Skyryse to formally confirm that it was revising or cancelling SOW1, and would  
 16 pay Moog for work completed to date and thus Moog would not be on the hook for  
 17 all deliverables under SOW1. Skyryse expressly agreed to this arrangement, and on  
 18 March 31, 2020, Rey sent Moog a letter formally cancelling the purchase order for  
 19 SOW1. (CC, ¶ 61) (Naqvi Dec., Ex. H).

20 **G. Moog Provides a Quote in Response to Skyryse’s Completely**  
 21 **Different and Expanded RFQ**

22 On May 22, 2020, Skyryse issued a completely new and different request for  
 23 quote to Moog (the “RFQ”). (CC, ¶ 64) (Naqvi Dec., Ex. I). Skyryse falsely tries to  
 24 equate the scope of this RFQ with the estimate Moog previously provided to  
 25 Skyryse in connection with Moog’s proposed SOW for [REDACTED]. (CC, ¶¶ 64-  
 26 66).

27 The Skyryse RFQ disclosed to Moog for the first time that Skyryse was  
 28 seeking certification of its own FlightOS flight control software. (Naqvi Dec., Ex.

1 I, p. 1). Skyryse was “[REDACTED]” and sought a quote  
 2 for up to “[REDACTED]” based on Skyryse’s proposed SOW and  
 3 provides six general line items of what Skyryse was seeking from Moog, including  
 4 development and delivery of a [REDACTED]  
 5 [REDACTED]  
 6 (*Id.*, pp. 1-2). The RFQ based on Skyryse’s own proposed SOW for up to [REDACTED]  
 7 [REDACTED] is completely different than Moog’s \$4.22M estimate for [REDACTED]  
 8 [REDACTED]” based on Moog’s separate proposed SOW. The  
 9 RFQ makes clear that Skyryse was not interested in delivery of original equipment  
 10 or the continuation of SOW 1.

11 Moog responded to Skyryse’s new and expanded RFQ in good faith on June  
 12 17, 2020. (CC, ¶ 66) (Naqvi Dec., Ex. J). Moog made clear that Skyryse’s “[REDACTED]  
 13 [REDACTED].”  
 14 (*Id.*). It also expected [REDACTED]  
 15 [REDACTED] showing that this was a completely new and different proposal. It  
 16 still provided a rough estimate totaling between [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]. (*Id.*).

19 In August 2020, Baptist claimed that the unit price for each shipset should  
 20 be [REDACTED]” each for “[REDACTED].” (CC, ¶ 68) (Naqvi  
 21 Dec., Ex. K). Thus, based on *Skyryse’s own statements*, its proposed estimate for  
 22 [REDACTED] would be [REDACTED] at minimum for just the initial  
 23 shipsets, and not including design and labor costs. This makes plain that Moog’s  
 24 prior \$4.22M estimate was for a completely different and more limited scope of  
 25 work, and that Moog did not make any “sham” offer where the RFQ was unclear  
 26 about sustained production quantities or minimums. Finally, Skyryse quotes from  
 27 August 12 and 17, 2020 correspondence between Baptist and Rey, claiming that by  
 28 this time it had “finally become clear to Skyryse that Moog was acting in bad faith

[and] with an improper motive.” (CC, ¶¶ 69, 70) (Naqvi Dec., Exs. L, M).

Skyryse’s claims accrued by this time, at the latest.

#### **H. Skyryse Does Not Identify any Misappropriation by Moog**

Skyryse alleges that to “compete against Skyryse,” Moog used Skyryse’s alleged confidential information to pursue its own autonomous flight development plans. (CC, ¶¶ 72-80). Skyryse alleges Moog used Skyryse’s trade secrets to

“[REDACTED] [REDACTED].” (*Id.*, ¶ 77). Skyryse also points to purported proprietary “certification plans,” including utilizing an [REDACTED]

[REDACTED] These general concepts are not proprietary on their face, and moreover, Skyryse fails to identify any specific Skyryse trade secret that Moog allegedly misappropriated.

Skyryse quotes from three internal Moog presentations related to autonomous flight programs, claiming they show Moog’s implementation of Skyryse’s trade secrets. (CC, ¶¶ 75-78) (Naqvi Dec., Ex. N, O, P). The actual documents show otherwise. Skyryse’s theory appears to be that because Moog is working on autonomous flight for R-44 helicopters, and Skyryse works on similar projects, Moog must have misappropriated Skyryse’s trade secrets. Not only have no facts been alleged in support, there is no dispute that Moog had been independently working on these projects with R-44 aircrafts going back to 2014 and Skyryse agreed Moog would continue to invest in such projects. (Naqvi Dec., Ex. B; Ex. C, § 7.2).

#### **I. Skyryse Targets and Hires Dozens of Moog Employees**

After a \$200M fundraise in October 2021, Skyryse went on a targeted hiring spree of Moog’s software engineers and other personnel. Skyryse falsely claims that “Moog set about trying to block Skyryse’s success in recruiting.” (CC, ¶ 81).

Skyryse quotes from November 2021 e-mails from Norman generally discussing Skyryse’s raiding of Moog’s employees to claim that “Mr. Norman’s

goal was to get Moog’s employees talking and intimidate them from leaving.” (CC, ¶ 84) (Naqvi Dec., Ex. Q). However, the actual documents show that Norman suggested that Moog’s lawyers remind departing employees of their obligation “  
 and that any “” are related to unauthorized disclosure of Moog trade secrets. (*Id.*). Norman’s concern has been validated by the subsequent theft of Moog trade secrets by Skyryse employees. Moreover, Skyryse does not allege that Moog actually blocked Skyryse from hiring any specific employee.

Skyryse quotes from the same e-mail where Norman talks about “  
 to suggest “an attempt to glean Skyryse’s confidential information from these third parties.” (CC, ¶ 87). Norman’s e-mail makes no reference to or indication of obtaining Skyryse information and, given the context of the entire e-mail, was intended to inquire of Robinson why Skyryse was actively recruiting so many Moog employees. (*Id.*). Skyryse does not identify what alleged Skyryse confidential information Moog obtained from Robinson.

### **III. SKYRYSE’S COUNTS 1 THROUGH 9 SHOULD BE DISMISSED**

#### **A. Choice of Law Issues**

##### **1. NY Choice of Law Rules Apply**

“[A]fter a 1404(a) transfer, the transferee court must apply the choice-of-law principles of the original forum.” *Mobilitie Mgmt., LLC v. Harkness*, No. 816CV01747JLSKES, 2016 WL 10880151, at \*3 (C.D. Cal. Nov. 28, 2016). This doctrine “applies not only to the transferred claims but also to any counterclaims, even if the counterclaims are asserted after the case has been transferred.” *Competitive Techs. v. Fujitsu Ltd.*, 286 F. Supp. 2d 1118, 1157 (N.D. Cal. 2003). Here, transfer occurred under Section 1404(a), so NY choice of law rules apply.



Under NY law, the choice-of-law analysis is only conducted if there is a “material conflict,” meaning that “the differences in the laws ‘have a significant possible effect on the outcome of the trial.’” *Hidden Brook Air, Inc. v. Thabet Aviation Int’l Inc.*, 241 F. Supp. 2d 246, 279 (S.D.N.Y. 2002). Where there is no conflict, a NY court applies NY law because it is the law of the forum state and is administratively easier. *Planet Payment, Inc. v. Nova Info. Sys., Inc.*, No. 07-CV-2520 CBA RML, 2011 WL 1636921, at \*8 (E.D.N.Y. Mar. 31, 2011). California courts similarly apply California law where no conflict exists. *GeoData Sys. Mgmt., Inc. v. Am. Pac. Plastic Fabricators, Inc.*, No. CV1504125MMMJEMX, 2015 WL 12731920, at \*5 (C.D. Cal. Sept. 21, 2015). However, where a CA court conducts a choice-of-law analysis pursuant to NY law after a transfer, either NY or CA law can apply. *See Macquarie Grp. Ltd. v. Pac. Corp. Grp., LLC*, No. 08CV2113-IEG-WMC, 2009 WL 539928, at \*10 (S.D. Cal. Mar. 2, 2009) (the SDCA, applying NY choice of law rules, held that where there was no conflict between the laws NY law applied because “a New York court would find New York law controls this claim,” also noting that briefing under CA law would “apply with equal vigor to New York law.”).

## 2. CA Law Applies to Statute of Limitations Issues

Following a transfer, CA courts apply the statute of limitations that the NY court would have applied, which would be NY’s statute of limitations under NY choice of law principles. *See Muldoon v. Tropitone Furniture Co.*, 1 F.3d 964, 966 (9th Cir. 1993). However, when applying NY choice of law rules, the transferee court must also apply NY’s borrowing statute, which the NY court would have applied. *Bank Hapoalim B.M. v. Bank of Am. Corp.*, No. 12-CV-4316-MRP MANX, 2012 WL 6814194, \*3 (C.D. Cal. Dec. 21, 2012) (holding that borrowing statute must be applied to claims in transferred case from NY).

NY Courts, although the statute of limitations is procedural, still apply the borrowing statute as an exception to the general rule that NY’s statute of



limitations applies. *Grice v. McMurdy*, 498 F. Supp. 3d 400, 413 (W.D.N.Y. 2020). Under the borrowing statute, “when a nonresident sues based upon a cause of action that accrued outside of New York, ‘the court must apply the shorter limitations period, including all relevant tolling provisions, of either: (1) New York; or (2) the state where the cause of action accrued.’” *Id.* For claims with an economic injury, the action accrues where the plaintiff resides, and the shorter of the statutes of limitation, as between the SOL in the state of plaintiff’s residence and in NY, must be used. *Id.* CA transferee courts applying NY choice of law rules follow this application of the borrowing statute and apply the shorter SOL to claims that accrued outside of New York. *See In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig.*, 2014 WL 3529686 at \*1 (in case transferred from NY, applying borrowing statute and finding claim untimely under foreign law). Here, given Skyryse’s location, CA law will apply for statute of limitations purposes.

#### **B. Skyryse Fails to State a Claim for Fraud**

“The elements of fraud in New York and California are materially identical.” *Woodard v. Labrada*, No. EDCV16189JGBSPX, 2021 WL 4499184, at \*16 (C.D. Cal. Aug. 31, 2021). Those elements are: (1) a misrepresentation or omission of material fact; (2) which the defendant knew to be false (scienter); (3) which the defendant made with the intention of inducing reliance; (4) upon which the plaintiff reasonably/justifiably relied; and (5) which caused injury to the plaintiff. *Sharbat v. Iovance Biotherapeutics, Inc.*, No. 20CIV1391(ER), 2022 WL 45062, \*4 (S.D.N.Y. Jan. 5, 2022).

Skyryse identifies four purported fraudulent misrepresentations by Moog: 1) “that Moog would be ‘continuing to work with Skyryse’ throughout their collaboration” (“Statement 1”); (2) “that the parties were on ‘our path forward’ to Phase 2 of their collaboration and beyond” (“Statement 2”); 3) “that Skyryse needed to cancel, terminate, or revise a purchase order . . . to secure continued performance from Moog” for Phase 2 and beyond (“Statement 3”); and 4) Moog’s

1 “informal estimate of its quote for work it would do in Phase 2 of the parties’  
2 collaboration was approximately \$4 million” (“Statement 4”). (CC, ¶ 120).

3 Actionable statements convey a “specific and measurable claim, capable of  
4 being proved false or of being reasonably interpreted as a statement of objective  
5 fact.” *Coastal Abstract Serv. v. First Am. Title Ins. Co.*, 173 F.3d 725, 731 (9th  
6 Cir. 1999). To support fraud, an “alleged misrepresentation must ordinarily be an  
7 affirmation of past or existing facts.” *Glen Holly Entertainment, Inc. v. Tektronix,*  
8 *Inc.*, 100 F. Supp. 2d 1086, 1093 (C.D. Cal. 1999).

9 “[P]redictions as to future events, or statements as to future action by some  
10 third party, are deemed opinions, and not actionable fraud.” *Tarmann v. State*  
11 *Farm Mut. Auto. Ins. Co.*, 2 Cal. App. 4th 153, 158 (1991); *Indigo Grp. USA Inc v.*  
12 *Polo Ralph Lauren Corp.*, No. 2:11-CV-05883-JHN-CW, 2011 WL 13128301, at  
13 \*3 (C.D. Cal. Oct. 25, 2011) (dismissing fraud claim with prejudice where each of  
14 the “supposed misrepresentations involve a statement that Ralph Lauren ‘would’  
15 do something in the future”). NY law is in accord. *Galvez v. Loc. 804 Welfare Tr.*  
16 *Fund*, 543 F. Supp. 316, 318 (E.D.N.Y. 1982) (“an essential element of an action  
17 for fraud or deceit is a representation as to a past or present fact, not as to what will  
18 be done in the future.”).

19 All of the four purported misrepresentations pled by Skyrise are  
20 unactionable future statements. Statement 1 is clearly a statement of future action,  
21 as evidenced by the phrase “continuing to work with Skyrise.” Statement 2 relates  
22 to the “path forward to Phase 2 of their collaboration and beyond.” Statement 3  
23 involves closing out Phase 1 to secure “continued performance by Moog” for  
24 Phase 2 and beyond. Statement 4 regards a purported estimate for future work  
25 provided by Moog for Phase 2. Moreover, all four of these statements concern  
26 future events related to Phase 2, but it is undisputed that the Parties only engaged  
27 in Phase 1, and there was no contractual obligation whatsoever to proceed to Phase  
28

1 2. Skyryse has not, and cannot, identify a single “affirmation of past or existing  
2 facts” to constitute an actionable fraud claim.

3 Skyryse’s fraud claim also fails for lack of reasonable reliance because the  
4 purported misrepresentations contradict the express, repeated language in SOW1  
5 about Phases 2-4 requiring additional SOWs on mutual agreement. *See Baymiller*  
6 *v. Guar. Mut. Life Co.*, 2000 WL 33774562, at \*4 (C.D. Cal. Aug. 3, 2000) (“there  
7 cannot be reasonable reliance upon misrepresentations or a failure to disclose that  
8 are contradicted by the express language of the insurance contracts.”).

9 Finally, Skyryse has not pled fraud, especially the purported  
10 misrepresentations, under Rule 9(b)’s heightened specificity requirements. *See*  
11 *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (“Averments  
12 of fraud must be accompanied by ‘the who, what, when, where, and how’ of the  
13 misconduct charged.”).

#### 14 **C. Skyryse Fails to State a Claim for Trade Secret Misappropriation**

15 To state a claim for trade secret misappropriation under the DTSA, a  
16 plaintiff must allege that: (1) the plaintiff owned a trade secret; (2) the defendant  
17 misappropriated the trade secret; and (3) the defendant's actions damaged the  
18 plaintiff.” *Genasys Inc. v. Vector Acoustics, LLC*, No. 22-CV-152 TWR (BLM),  
19 2022 WL 16577872, at \*8 (S.D. Cal. Nov. 1, 2022).

##### 20 **1. Skyryse Fails to Identify its Purported Trade Secrets**

21 Skyryse identifies its purported trade secrets at issue as: “proprietary  
22 automated flight technologies, certification, development, and testing plans, and  
23 other financial, business, scientific, technical, economic, or engineering  
24 information, including patterns, plans, compilations, program devices, formulas,  
25 designs, prototypes, methods, techniques, processes, procedures, programs, or  
26 codes regarding advanced automated flight control systems, general aviation, and  
27 urban transportation.” (CC, ¶ 109.) Elsewhere in the CC, Skyryse describes its  
28 purported trade secrets as: 1) “highly confidential technical information, drawings,

1 schematics, computer aided design (CAD) files, and business plans regarding  
 2 Skyryse’s test aircraft and certification plans and roadmaps”; 2) “proprietary,  
 3 highly confidential, and state-of-the art trade secret flight control”; 3) a  
 4 “confidential ‘Skyryse Master Plan’”; and 4) “confidential business information  
 5 and strategies regarding its plans to develop automated flight systems.” (*Id.*, ¶¶ 40-  
 6 45). All of these generic, conclusory, and general descriptions fall woefully short  
 7 of Skyryse’s pleading obligations.

8 To allege a trade secret, a plaintiff must “describe the subject matter of the  
 9 trade secret with sufficient particularity to separate it from matters of general  
 10 knowledge in the trade or of special persons who are skilled in the trade, and to  
 11 permit the defendant to ascertain at least the boundaries within which the secret  
 12 lies.” *Navigation Holdings, LLC v. Molavi*, 445 F. Supp. 3d 69, 75 (N.D. Cal.  
 13 2020). A “laundry list of items ... does not meaningfully define the trade secrets at  
 14 issue.” *Invisible Dot, Inc. v. DeDecker*, 2019 WL 1718621, at \*5 (C.D. Cal. Feb. 6,  
 15 2019). Listing “catchall phrases” or “categories of information” is insufficient to  
 16 identify trade secrets. *See Whiteslate, LLP v. Dahlin*, No. 20-CV-1782-W-(BGS),  
 17 2021 WL 2826088, at \*6 (S.D. Cal. July 7, 2021) (dismissing claim where trade  
 18 secrets were identified as “contracts, document templates, and other work-product,  
 19 as well as Slate's client list and database”); *Becton, Dickinson & Co. v. Cytek*  
 20 *Biosciences Inc.*, No. 18-CV-00933-MMC, 2018 WL 2298500, at \*3 (N.D. Cal.  
 21 May 21, 2018) (allegations of “design review templates,” “fluidics design files,”  
 22 and “source code files” were too broad to identify trade secrets); *Masimo Corp. v.*  
 23 *Apple Inc.*, No. SACV2048JVSJDEX, 2020 WL 4037213, at \*5 (C.D. Cal. June  
 24 25, 2020) (broad references to categories like “product plans,” “personnel  
 25 information,” “product briefs,” and “technical drawings,” without “reference to  
 26 specific plans, briefs, or drawings” were insufficient).

27 Skyryse has done exactly what the Ninth Circuit prohibits. It has provided a  
 28 “laundry list” of “catchall phrases” or “categories of information.” Skyryse fails to

1 specifically identify or attach as documentary evidence any technology, document,  
2 plan, process, technique, or source code file allegedly misappropriated by Moog.  
3 Merely claiming that Moog has misappropriated “flight technologies,”  
4 “engineering information,” “formulas,” or “codes,” for example, does not place  
5 Moog on fair notice of what it is being accused of misappropriating, much less  
6 demonstrate that this material is, as Skyryse repeatedly pleads, “confidential  
7 information.”

8 Skyryse’s failure to identify a single trade secret is particularly troubling  
9 given that Skyryse was clearly on notice of this requirement. Indeed, Skyryse  
10 previously repeatedly argued that Moog’s trade secret claims failed to satisfy the  
11 particularity requirement. Specifically, Skyryse argued that “[v]ague descriptions  
12 of ‘certain’ information in broad categories like ‘source code,’ ‘certification  
13 process documents,’ and ‘check-lists’ come nowhere close to meeting the standard  
14 for ‘particularity’ required.” (Dkt. 166-1, p. 12). Skyryse also argued: “Only Moog  
15 knows, for example, which specific lines or blocks of its source code, which  
16 information in its certification process documents, and which portions of its  
17 checklists it alleges to be trade secrets.” (*Id.*, p. 13). Skyryse even demanded that  
18 Moog provide a “narrative response describing with particularity . . . which  
19 specific software, components of software, checklists, code, or compilations  
20 thereof Moog claims are protectable as trade secrets under the law.” (Dkt. 193, p.  
21 6, fn. 2).

22 As it currently stands, only Skyryse knows which types of documents or  
23 information within the 24 broad, boilerplate categories listed in Paragraph 109  
24 constitute protectable trade secrets. Skyryse has failed to place Moog on notice of a  
25 single protectable trade secret. Conversely, concurrent with the filing of this  
26 Motion, Moog is serving a comprehensive, multi-hundred page trade secret  
27 disclosure.

28

## 2. Skyryse Fails to Allege Misappropriation

Under the DTSA, “misappropriation” means either (1) the acquisition of a trade secret by another person who knows or has reason to know that the trade secret was acquired by improper means; or (2) the disclosure or use of a trade secret of another without express or implied consent.” 18 U.S.C. § 1839(5)).

Here, Skyryse has not pled any facts showing when and how Moog misappropriated its trade secrets. Skyryse does not allege any facts describing what trade secrets Moog misappropriated, who was involved in the misappropriation, and how they were used at Moog. It merely cites to two internal Moog presentations showing that Moog was pursuing autonomous flight projects with R-44 aircrafts (which it had been doing since 2014). (Naqvi Dec., Exs. N, O). Skyryse expressly acknowledged that Moog had, and would continue to, invest in autonomous flight programs for R-44. (CC, Ex. C, § 7.2). Conclusory allegations of competitive activity are not sufficient to state a claim for misappropriation. *Space Data Corp. v. X*, No. 16-cv-03260-BLF, 2017 WL 5013363, at \*2 (N.D. Cal. Feb. 16, 2017) (finding insufficient “conclusory assertions . . . not supported by adequate factual allegations” where alleged misappropriation consisted of defendants engaging “in other business activity based on Space Data’s confidential trade secret information”).

## D. Skyryse Fails to State a Claim for Breach of Contract

### 1. NY Law Applies

“[W]here, as here, a diversity action is transferred by a New York district court to a California district court, the California court must apply New York law in determining whether a choice-of-law provision in an agreement is enforceable,” and “a court is to apply the law selected in the contract as long as the state selected has sufficient contacts with the transaction.” *Santa Fe Pointe, LP v. Greystone Servicing Corp.*, No. C-07-5454-MMC, 2009 WL 1438285, at \*3 (N.D. Cal. May 19, 2009). Under NY law, “as a general matter, the parties’ manifested intentions



1 to have an agreement governed by the law of a particular jurisdiction are honored.”  
 2 *2002 Lawrence R. Buchalter Alaska Tr. v. Philadelphia Fin. Life Assur. Co.*, 96 F.  
 3 Supp. 3d 182, 207 (S.D.N.Y. 2015) (“Alaska”). NY has sufficient contacts  
 4 because Moog maintains its principal place of business in New York, the NDAs  
 5 and T&C all have New York choice of law provisions, and the T&C has exclusive  
 6 jurisdiction and venue in New York. *See Torain v. Clear Channel Broad., Inc.*, 651  
 7 F. Supp. 2d 125, 138 (S.D.N.Y. 2009). New York law applies to this claim.

## 8 **2. Skyryse’s Breach of Contract Claim Fails as Pled**

9 Skyryse’s breach of contract claim is based on alleged breaches of: 1)  
 10 Sections 2, 3, and 5 of the 2018 and 2019 NDAs (for using Skyryse confidential  
 11 information); 2) Sections 1-5, and 7-9 of SOW 1 (for not delivering hardware); and  
 12 3) Sections 9, 14, 20, 23, 30, 32, and 43 of the T&C (for using Skyryse  
 13 confidential information). (CC, ¶ 91). It is undisputed that the T&C governed  
 14 work under SOW 1 and incorporated the 2019 NDA by reference. (*Id.*, ¶ 36; Ex. D,  
 15 § 23).

16 However, Section 31 of the T&C not only says that NY law governs, but  
 17 also includes an exclusive jurisdiction and venue clause in NY. (*Id.*, § 31). “If the  
 18 forum clause was communicated to the resisting party, has mandatory force and  
 19 covers the claims and parties involved in the dispute, it is presumptively  
 20 enforceable.” *Phillips v. Audio Active Ltd.*, 494 F.3d 378, 383 (2d Cir.2007). “For  
 21 a forum selection clause to be deemed mandatory, jurisdiction and venue must be  
 22 specified with mandatory or exclusive language.” *Cent. Nat’l-Gottesman, Inc. v.*  
 23 *M.V. “GERTRUDE OLDENDORFF”*, 204 F. Supp. 2d 675, 678 (S.D.N.Y. 2002).  
 24 CA law provides the same. *See Almont Ambulatory Surgery Ctr., LLC v.*  
 25 *UnitedHealth Grp., Inc.*, No. CV-14-02139-MWF-VBKX, 2015 WL 1608991, at  
 26 \*45 (C.D. Cal. Apr. 10, 2015) (“The prevailing rule is ... that where venue is  
 27 specified with mandatory language the clause will be enforced.”).

1           Thus, Skyryse’s breach of contract claims that are predicated on breaches of  
2 the T&C and the 2019 NDA fail because this Court lacks jurisdiction and venue to  
3 adjudicate such claims. The terms of the T&C are unambiguous that “*only* the  
4 courts” located in New York “shall have jurisdiction and venue to resolve” “[a]ny  
5 controversy or claim arising out of or related to” the T&C. This Court must dismiss  
6 Skyryse’s breach of contract claims based on the T&C and 2019 NDA because it  
7 lacks jurisdiction and venue to hear them. (CC, Ex. C, § 31).

8           Any breach claim regarding SOW1 also fails because Skyryse has not pled  
9 facts showing a breach by Moog for purported failure to deliver all hardware under  
10 SOW1. Skyryse expressly cancelled SOW1 on March 31, 2020. (Naqvi Dec., Ex.  
11 H). Skyryse agreed to pay Moog for work completed (~\$970k) and close out Phase  
12 1 – and understood how Moog calculated the \$970k number. (*Id.*, Ex. G). Moog  
13 was thereby released of any obligation for all the deliverables under SOW1  
14 because the Parties modified their agreement.

15           Moog’s purported breaches of the 2018 NDA, 2019 NDA, and the T&C also  
16 fail because it has not pled any facts that Moog improperly used Skyryse  
17 confidential information. Skyryse fails to identify any trade secret or confidential  
18 information that Moog misappropriated. *See Art Cap. Grp., LLC v. Carlyle Inv.*  
19 *Mgmt. LLC*, 151 A.D.3d 604, 605 (1st Dept., 2017) (dismissing a claim for breach  
20 of a confidentiality agreement where a plaintiff does not identify what confidential  
21 information was allegedly misused). The fact that Moog has overlapping business  
22 and also works on autonomous flight for R-44 helicopters (which Skyryse  
23 acknowledged, historical and future) is not sufficient to establish a breach.  
24 *Precision Concepts, Inc. v. Bonsanti*, 172 A.D.2d 737, 738 (2d Dept, 1991)  
25 (affirming dismissal of misappropriation claim where “plaintiff failed to  
26 sufficiently assert that the knowledge and information [at issue] was obtained from  
27 [plaintiff]....”).



**E. Skyryse Fails to State a Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing**

Skyryse alleges “Moog unfairly interfered with Skyryse’s right to receive the benefits of at least SOW 1, the Purchase Order, the Terms and Conditions, and subsequent SOWs” by “providing Skyryse with a sham quote for services that Moog knew was unreasonable and intended not to be accepted” and by “actively working to unfairly compete against Skyryse, rather than collaborating with it.” (CC, ¶ 99).

**1. The Implied Covenant Claim is Time-Barred**

“A claim for the covenant of good faith and fair dealing has a two year statute of limitations when it sounds in tort.” *Fehl v. Manhattan Ins. Grp.*, No. 11-CV-02688-LHK, 2012 WL 10047, at \*4 (N.D. Cal. Jan. 2, 2012); *Casey v. Metropolitan Life Ins. Co.*, 688 F. Supp. 2d 1086, 1100 (E.D. Cal. 2010). “This claim accrues at the time of breach.” *Weiss v. DreamWorks SKG*, No. CV1402890DDPAJWX, 2015 WL 12711658, at \*6 (C.D. Cal. Feb. 9, 2015).

Skyryse’s implied covenant claim sounds in tort as opposed to contract. *See DiDio v. Jones*, No. CV134949PSGAGRX, 2014 WL 12591625, at \*2 (C.D. Cal. May 6, 2014) (implied covenant claim sounded in tort where defendant allegedly “acted in conscious disregard of plaintiffs’ rights”). The claim is not tied to any particular contractual provision or Moog’s alleged breach thereunder, and is instead predicated on the same types of alleged conduct that support its fraud claim. These claims accrued at latest on August 17, 2020, when Skyryse alleges that Moog’s alleged bad faith conduct and improper motives had “become clear to Skyryse.” (CC, ¶¶ 69-70) (Naqvi Dec., Exs. L, M). The counterclaims were not filed until January 30, 2023.

**2. The Implied Covenant Claim Fails as Pled**

Pursuant to NY choice of law analysis, a federal court in a diversity action in NY uses NY law to determine the scope of a contractual choice-of-law

1 clause. *Alaska*, 96 F. Supp. 3d at 211. Under NY law, a breach of the covenant of  
 2 good faith and fair dealing is governed by a contractual choice-of-law provision  
 3 like the ones at issue in the NDAs and T&C. *Id.* at 213-14 (gathering cases); *see*  
 4 *also Torain*, 651 F. Supp. 2d at 138 (finding that breach of implied covenant was  
 5 governed by law selected in choice-of-law provision). Thus, New York law  
 6 governs this claim substantively.

7 To the extent Skyryse argues that its breach of implied covenant claim  
 8 sounds in contract as opposed to tort (to circumvent the SOL), its claim still fails. It  
 9 is well-established that “[u]nder New York Law, a claim for breach of an implied  
 10 covenant of good faith and fair dealing does not provide a cause of action separate  
 11 from a breach of contract claim.” *Atlantis Info. Tech., GmbH v. CA, Inc.*, 485 F.  
 12 Supp. 2d 224, 230 (E.D.N.Y. 2007). As a result, the claim “must be dismissed, as a  
 13 matter of law, as redundant.” *O’Hearn v. Bodyonics, Ltd.*, 22 F. Supp. 2d 7, 11-12  
 14 (E.D.N.Y. 1998). California law is in accord. *See Guz v. Bechtel Nat’l, Inc.*, 24  
 15 Cal. 4th 353, 327 (2000) (“where breach of an actual term is alleged, a separate  
 16 implied covenant claim, based on the same breach, is superfluous”).

17 If based in contract, Skyryse’s breach of implied covenant claim must be  
 18 dismissed for lack of jurisdiction and venue, as described above. It is also  
 19 redundant with its breach of contract claims. Skyryse’s claims additionally fail  
 20 because: 1) it expressly agreed to cancel the purchase order for SOW1 and pay  
 21 Moog for work completed; 2) Moog did not provide any “sham” quote and  
 22 provided a quote in response to Skyryse’s new and expanded RFQ (which was a  
 23 little more than double of Skyryse’s own estimate); and 3) Skyryse expressly  
 24 contracted that Moog had no obligation to enter into any additional SOW for  
 25 Phases 2-4. (CC, Ex. C, §§ 4, 5, 9) (Naqvi Dec., Exs. G, J). Thus, the documents  
 26 referenced in Skyryse’s CC demonstrate that here were no breaches.

**F. Skyryse Fails to State a Claim for Breach of Implied Contract**

Skyryse alleges it and Moog “entered into an implied-in-fact contract to engage in a multi-phase development initiative,” and that “Moog breached its obligations to Skyryse by failing to perform the acts required under Phase 2 and subsequent Phases.” (*Id.*, ¶¶ 103, 105).

**1. The Implied Contract Claim is Time Barred.**

Under California law, breach of implied-in-fact contract is subject to a 2-year statute of limitations. *Anderson v. Stallone*, No. 87-0592-WDKGX, 1989 WL 206431, at \*2 (C.D. Cal. Apr. 25, 1989); *Ormeno v. Relentless Consulting Inc.*, No. 21-CV-1643 (LJL), 2022 WL 103482, at \*4-\*5 (S.D.N.Y. Jan. 11, 2022) (applying the borrowing statute to find that an action for breach of implied contract was time-barred by California’s two-year statute of limitations).

This claim accrued at latest on August 17, 2020, when Skyryse alleges that Moog’s alleged bad faith conduct and improper motives had “become clear to Skyryse.” (CC, ¶¶ 69-70) (Naqvi Dec. L, M). The counterclaims were not filed until January 30, 2023.

**2. The Implied Contract Claim is Insufficiently Pled**

There is at least some conflict between the laws of New York and California regarding breach of implied contract. *Forest Park Pictures v. Universal Television Network, Inc.*, 683 F.3d 424, 433 (2d Cir. 2012). For contract actions, a “center of gravity” approach is taken to determine which law applies, considering the place of performance, place of contracting, and places of business of the parties. *Id.* Here, California law likely applies given Skyryse’s location in and alleged harm in California. *See Moses v. Apple Hosp. Reit Inc.*, No. 14-CV-3131-DLI-SMG, 2015 WL 1014327, at \*4 (E.D.N.Y. Mar. 9, 2015) (“[b]oth tests [i.e., interest analysis and “center of gravity”] focus on the parties’ domiciles and the locus of the tort or harm a plaintiff suffers”).

Under California law, the elements for a breach of an implied-in-fact contract claim are: (1) that a valid contract existed; (2) Plaintiff's performance, or excused nonperformance, of the contract; (3) Defendants' breach; and (4) resulting damages. *nKlosures, Inc. v. Avalon Lodging LLC*, No. CV2200459RSWLJDEX, 2022 WL 17093927, at \*7 (C.D. Cal. Nov. 17, 2022). "Where a contract is so uncertain and indefinite that the intention of the parties in material particulars cannot be ascertained, the contract is void and unenforceable." *Robinson & Wilson, Inc. v. Stone*, 35 Cal.App.3d 396, 110 Cal.Rptr. 675, 683 (1973); *Gateway Rehab & Wellness Ctr., Inc. v. Aetna Health of California, Inc.*, No. SACV 13-0087-DOC MLG, 2013 WL 1518240, at \*4 (C.D. Cal. Apr. 10, 2013) (an implied contract is not found where "the most rudimentary terms necessary for the determination of damages" are not defined and pleaded, including rates of payment).

Here, the purported implied contract to "engage in a multi-phase development initiative" is not sufficiently defined. Skyrise does not and cannot allege any specific payment, deliverable, labor, or other requirements under Phases 2 and 4. This is because the Parties were not obligated to enter into any contract beyond Phase 1, and no SOWs had been executed for Phases 2 through 4.

In any event, it is "well settled that an action based on an implied-in-fact or quasi-contract cannot lie where there exists between the parties a valid express contract covering the same subject matter." *Lance Camper Mfg. Corp. v. Republic Indem. Co.*, 44 Cal. App. 4th 194, 203 (1996); *Allied Trend Int'l, Ltd. v. Parcel Pending, Inc.*, No. SACV1900078AGJDEX, 2019 WL 4137605, at \*3 (C.D. Cal. June 3, 2019) ("As a matter of law, a party can't add to or contradict the terms of a written contract through an implied contract claim."). Here, a contract already exists – SOW1 – that expressly governs the terms for the multi-phase development initiative. SOW1 only covered Phase 1 and the Parties never executed additional SOWs for Phases 2 through 4. (CC, Ex. C, §§ 4, 5, 9).

**G. Skyryse Fails to State a Claim for Tortious Interference with Contractual Relationships or Existing Business Relationships**

Skyryse alleges that it and “Robinson Helicopter entered into various contracts” and that “Moog was aware of these contracts” but that its conduct “prevented Skyryse’s performance” or made it “more difficult.” (*Id.*, ¶¶ 127, 128). Skyryse also concludes, without facts, that Moog intended to disrupt these purported contracts. (*Id.*, ¶ 129).

Skyryse’s seventh counterclaim for intentional interference with existing business relationships is not a recognized standalone cause of action in the Ninth Circuit. It appears to be predicated on the same alleged conduct regarding purported interference with Skyryse’s business relationship (as opposed to unidentified contracts) with Robinson. (*Id.*, ¶¶ 131-136).

**1. CA Law Likely Applies**

NY courts have found that there is a conflict between NY and CA law on this claim because CA law allows a claim based on “a disruption” rather than only “actual breach.” *First Hill Partners, LLC v. BlueCrest Cap. Mgmt. Ltd.*, 52 F. Supp. 3d 625, 635 (S.D.N.Y. 2014). Given this conflict, NY conducts an interest analysis test. *Id.* Because a claim for tortious interference is considered a “conduct-regulating cause of action,” “the law of the jurisdiction where the tort occurred will generally apply.” *Id.* at 636. Where the conduct and injuries happen in multiple locations, generally the “last event necessary for the tort” will determine the jurisdiction, and the last event is the injury. *See Planet Payment, Inc.*, 2011 WL 1636921 at \*9. Given Skyryse’s location and alleged injury, CA law will likely apply.

**2. Skyryse Fails to Allege Sufficient Facts to State a Claim**

A tortious interference with contractual relations claim under California law has five elements: “(1) a valid contract between plaintiff and a third party; (2) defendant’s knowledge of the contract; (3) defendant’s intentional acts designed to

1 induce breach or disruption of the contract; (4) actual breach or disruption; and (5)  
2 resulting damage.” *Fam. Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*,  
3 525 F.3d 822, 825 (9th Cir. 2008).

4 As a threshold matter, Skyryse’s sixth counterclaim fails because it has not  
5 identified a specific contract that was purportedly interfered with. Skyryse only  
6 generally alleges that it has “various contracts” with Robinson Helicopter. It does  
7 not identify any contract by its date, terms, or otherwise. Moog cannot defend  
8 against a claim that it interfered with third party contract(s) when it does not know  
9 what those contracts are. Ninth Circuit courts routinely dismiss tortious  
10 interference claims on similar grounds. *See Teledyne Risi, Inc. v. Martin-Baker*  
11 *Aircraft Co. Ltd.*, No. CV1507936SJOGJSX, 2016 WL 8857029, at \*5 (C.D. Cal.  
12 Feb. 2, 2016) (“Here, Plaintiff has failed to identify the specific contract with  
13 which Defendant interfered. Plaintiff also does not provide any factual allegation  
14 that MB in fact knew about the alleged third party contract.”); *Gemsa Enterprises,*  
15 *LLC v. Pretium Packaging, LLC*, No. SACV21844JVSJDEX, 2021 WL 4551200,  
16 at \*6 (C.D. Cal. July 27, 2021) (dismissing claim with prejudice “because Gemsa  
17 does not identify any specific contract with any specific third party”).

18 Skyryse also fails to allege facts that Moog intended to interfere with or  
19 disrupt Skyryse’s unspecified contracts with Robinson. The CC has no allegations  
20 specifying what actions Moog took. While Skyryse cites to a communication  
21 where Moog referenced contacting Robinson Helicopter (CC, ¶ 87), that  
22 communication says nothing about obtaining Skyryse confidential information or  
23 interfering with any contracts. (Naqvi Dec., Ex. Q). Moreover, Skyryse does not  
24 allege any facts that any such communication leading to interference actually  
25 occurred.

26 Finally, Skyryse does not plead how its unidentified contracts were  
27 breached, that its business relationship with Robinson was harmed, or that any  
28



1 damages resulted. Skyryse does not allege that it lost any business or contracts  
 2 with Robinson. Skyryse merely offers conclusions without the required facts.

3 **H. Skyryse Fails to State a Claim for Intentional Interference with**  
 4 **Prospective Business Advantage**

5 Skyryse alleges it “invested significant time, resources, and capital to  
 6 develop confidential and proprietary information about prospective customers.”  
 7 (CC, ¶ 138). It concludes that Moog had knowledge of these unidentified  
 8 “prospective customers,” and “intentionally interfered with these business  
 9 relationships,” which resulted in “actual disruption.” (*Id.*, ¶¶ 139-141).

10 There is no substantive difference between the law of NY and CA with  
 11 regard to tortious inference with prospective economic advantage. Six  
 12 *Dimensions, Inc. v. Perficient, Inc.*, No. 15 CIV. 8309 (PGG), 2017 WL 10676897,  
 13 at \*5 n.3 (S.D.N.Y. Mar. 28, 2017). The same analysis for tortious interference  
 14 with contract applies. *See J&R Multifamily Grp., Ltd. v. U.S. Bank Nat'l Ass'n as*  
 15 *Tr. for Registered Holders of UBS-Barclays Com. Mortg. Tr. 2012-C4, Com.*  
 16 *Mortg. Pass-Through Certificates, Series 2012-C4*, No. 19-CV-1878 (PKC), 2019  
 17 WL 6619329, at \*6 (S.D.N.Y. Dec. 5, 2019) (holding that “where plaintiffs are  
 18 located,” and therefore where the injury occurred, is the jurisdiction with the  
 19 applicable law). Given Skyryse’s location and alleged injury, CA law will likely  
 20 apply.

21 Proving a claim of tortious interference with prospective business advantage  
 22 requires “(1) the existence of a special economic relationship between [plaintiff]  
 23 and third parties that may economically benefit [plaintiff]; (2) knowledge by the  
 24 [defendant] of this relationship; (3) intentional acts by the [defendants] designed to  
 25 disrupt the relationship; (4) actual disruption of the relationship; and (5) damages  
 26 to the [plaintiff].” *Garter Bare Co. v. Munsingwear Inc.*, 723 F.2d 707, 715 (9th  
 27 Cir. 1984).

Skyryse’s claim fails on a threshold level because it does not identify any specific or particular prospective business relationships. Instead, it merely points to an amorphous group of unidentified “prospective customers.” Courts have held that, “in order to state a claim for intentional interference with prospective business advantage, it is essential that the Plaintiff allege facts showing that Defendant interfered with Plaintiff’s relationship with a particular individual.” *Damabeh v. 7-Eleven, Inc.*, No. 5:12-CV-1739-LHK, 2013 WL 1915867, at \*10 (N.D. Cal. May 8, 2013) (holding that claims fail where plaintiff alleges “a prospective business relationship with his employees and customers” because this “failed to identif[y] the particular relationships or opportunities with which Defendant is alleged to have interfered”); *Teledyne Risi, Inc. v. Martin-Baker Aircraft Co. Ltd.*, No. CV1507936SJOGJSX, 2016 WL 8857029, at \*6 (C.D. Cal. Feb. 2, 2016) (“Plaintiff makes a conclusory assertion that Defendant has interfered with the economic relationship between Teledyne and the sequencer marketplace as a whole, rather than alleging that Defendant interfered with a specific relationship.”).

Skyryse also fails to allege facts showing: (1) Moog knew of these unidentified “prospective customers;” (2) intentional conduct by Moog to disrupt these unidentified relationships; (3) disruption of the unidentified relationships; or (4) resulting harm to Skyryse. There are simply no facts pled in support of this claim.

#### **I. Skyryse Fails to State a Claim for Unfair Business Practices**

California’s UCL broadly proscribes unfair competition, which includes “any unlawful, unfair or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200; *Cappello v. Walmart Inc.*, 394 F. Supp. 3d 1015, 1018 (N.D. Cal. 2019)). Nevertheless, Skyryse’s UCL claim fails under all three prongs.

Skyryse alleges Moog engaged in unlawful conduct “by interfering with Skyryse’s lawful hiring of California-based employees”(CC, ¶ 146), but fails to specify both how Moog interfered with Skyryse’s hiring or unlawfully prevented



1 any employee from joining Skyryse. A claim under the UCL’s “unlawful” prong  
2 is met if a practice violates some other law. Where the underlying or “borrowed”  
3 claim fails, so too does the UCL claim. *Ingels v. Westwood One Broadcasting*  
4 *Services, Inc.*, 129 Cal. App. 4th 1050, 1060 (2005). Skyryse cannot meet the  
5 “unlawful” prong of the UCL because each of its other causes of action fails.

6 Skyryse alleges that Moog “interfer[ed] with Skyryse’s business  
7 relationships, interfer[ed] with Skyryse’s lawful hiring of Moog personnel, and  
8 induc[ed] Skyryse to terminate its purchase order with Moog.” (CC, ¶ 148). The  
9 California Supreme Court defines an “unfair” act as: “conduct that threatens an  
10 incipient violation of an antitrust law, or violates the policy or spirit of one of those  
11 laws because its effects are comparable to or the same as a violation of the law, or  
12 otherwise significantly threatens or harms competition.” *Cel-Tech Comm’s, Inc. v.*  
13 *Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 187 (1999) (“[i]njury to a  
14 competitor is not equivalent to injury to competition; only the latter is the proper  
15 focus of antitrust laws.”). Skyryse’s UCL claim fails under the “unfair” prong  
16 because it does not allege any facts that Moog violated any antitrust laws, or  
17 harmed market competition in general.

18 Skyryse then concludes Moog engaged in “deceptive trade practices” by  
19 “making false and misleading representations to Skyryse to induce it to take  
20 actions detrimental to its own interests.” (CC, ¶ 147). The “term ‘fraudulent,’ as  
21 used in the UCL, has required . . . a showing that members of the public are likely  
22 to be deceived.” *Daugherty v. Am. Honda Motor*, 144 Cal. App. 4th 824, 838  
23 (2006); *see also In re Tobacco II Cases*, 46 Cal. 4th 298, 312 (2009) (a fraudulent  
24 business practice is one that is likely to mislead consumers). Allegations of  
25 fraudulent conduct made under the UCL must be pled with particularity and  
26 comply with Rule 9(b). *See Vess v. Ciba-Geigy Corp. USA*, 317 F. 3d 1097, 1106  
27 (9th Cir. 2003). Skyryse’s UCL claim fails under the “fraudulent” prong because it  
28 alleges no facts demonstrating that Moog is likely to mislead consumers at large.

1 Skyryse also fails to allege any facts, let alone sufficient facts under Rule 9(b),  
2 regarding Moog's purported "false and misleading representations to Skyryse."

3 **IV. CONCLUSION**

4 Moog respectfully requests that the Court grant this Motion and dismiss with  
5 prejudice Skyryse's Causes of Action One through Nine in the Counterclaims.

6  
7  
8 Dated: February 21, 2023 SHEPPARD MULLIN RICHTER & HAMPTON LLP

9 By /s/ Rena Andoh  
10 Rena Andoh

11 Attorney for Plaintiff and Counterdefendant  
12 MOOG INC.  
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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Moog Inc., certifies that this brief contains 8,999 words, which:

\_\_\_ complies with the word limit of L.R. 11-6.1.

X complies with the word limit set by Court order dated February 14, 2023 (Dkt. 357).

Dated: February 21, 2023 SHEPPARD MULLIN RICHTER & HAMPTON LLP

By /s/ Rena Andoh  
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